

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
February 8, 2012**

Members Present

Mike Haxby	John Greenfield
Gardner Skinner	Rian Van Leuven
Roy Galbreaith	James Alcorn
James Arnold	Steve Millard
Jasen Carrier	Clay Atwood
Susan Veltman	Jacki Royster

Members Absent

Senator John Andreason
Representative Jeff Nasset
Dave Whaley
Paul Collins

Industrial Commission

Chairman Thomas E. Limbaugh
Commissioner Thomas P. Baskin
Commissioner R. D. Maynard
Director Mindy Montgomery

Opening Remarks:

Chairman Jasen Carrier asked for a moment of silence for the recent passing of Workers' Compensation Attorney John Tait.

Chairman Carrier called on Susan Veltman for an announcement. Ms. Veltman informed the members that the Idaho State Bar's Annual Workers' Compensation Conference is scheduled for March 9, 2012 in Sun Valley. She also noted that the Workers Compensation (WC) Section of the Idaho State Bar has begun a professionalism award program. Each year an alternate member of the WC section of the State Bar (Claimant Attorney / Defense Attorney) will be honored as having been an outstanding person in the Workers' Compensation program. Their name will be placed on a plaque displayed in the lobby of the Industrial Commission. This year, awards will be made posthumously to two attorneys: John Tait of Lewiston and long time advocate of the Workers' Compensation program, John (Jack) Barrett.

Minutes:

The Minutes of November 9, 2011 were reviewed. An amendment to include Jasen Carrier in the PFFI list of subcommittee members was made. Upon motion by Mike Haxby, seconded by Steve Millard, the Minutes were approved as amended.

Subcommittee Reports:

§72-432, Attorney Fees – (*James Arnold, Chairman, Roy Galbreaith, Mike Haxby, John Greenfield, Susan Veltman, Gardner Skinner, Dan Bowen, Darin Monroe, Scott McDougall, Commissioner Baskin, Woody Richards, and Brad Eidam*) Subcommittee Chairman James

Arnold reported that at the last subcommittee meeting it was determined that a draft of proposed changes to §72-432 was needed in order to proceed. Mr. Arnold stated that he received suggestions for changes to the statute from other attorneys, but to incorporate the suggested changes into a draft is an ominous task which he has not yet tackled. Mr. Arnold wants some assurance, that if he puts significant time and effort into drafting legislation, there will be a chance that the subcommittee will move forward with submission of the proposed legislation to the Commission and legislature. According to Mr. Arnold, a desire by subcommittee members to include provisions for attorney fees in resolving medical procedure issues involving small medical payments is an important component in being able to move forward. Mr. Arnold will schedule a meeting of the subcommittee early next month to determine the subcommittee's desire to proceed.

Independent Medical Evaluations – (*Chairman Mike Haxby, Rian Van Leuven, James, Arnold, Susan Veltman, Steve Millard, Paul Collins, Dave Whaley, Jasen Carrier, James Alcorn, Gardner Skinner, Patti Vaughn, Woody Richards, Paul Jackson, Mindy Montgomery, Kent Day*) Subcommittee Chairman Mike Haxby reported that the subcommittee on independent medical evaluations (IMEs) met yesterday, and after a lengthy discussion with a good number of attendees, the result was the same as before; that the system is not perfect, but §72-433, Idaho Code, is not the culprit. There is not a large call from public or the Commission to make legislative changes since it is not a frequent or huge issue. Mr. Haxby suggested that educational workshops be held or that parties encourage each other to agree on the use of a single physician to perform IME's which may reduce overall costs of claims and hopefully provide better outcomes for all parties.

Commissioner Baskin noted that fortunately this issue does not occur frequently, but when two IME's greatly differ and the Commission is unable to identify which IME is more accurate, the Commission may use its statutory authority to order an IME in order to determine credibility. The Committee voiced no objections to the Commission exercising its authority, and then, if concerns arise from the workers' compensation community, discussions could be held again.

Commissioner Baskin concurred with Mr. Haxby that a lot of money is being wasted having IME's conducted by each party in a claim. It was suggested that more parties should work together to agree on one medical examiner to perform one IME. Commissioner Baskin stated that the Commission is happy that the issue was vetted with the subcommittee, and the Commission will not move forward at this time to change any rules or statutes in regard to independent medical evaluations.

Mr. Haxby requested consensus to dissolve the IME subcommittee and consensus was reached.

Indemnity Benefit Notification – Letter to Claimants – Scott McDougall reviewed the latest draft of the letter the Commission sends out to injured workers upon receipt of a notice of injury with the changes suggested at the last Advisory Committee meeting. Mr. Arnold and Mr. Greenfield suggested several new amendments, and Mr. Greenfield stated he would review the draft and send the Commission his comments for further changes.

Public Comment: Woody Richards requested that the final revisions be circulated to all of the Advisory Committee members prior to final approval.

Uninsured Employers Fund – (Chairman James Kile, Clay Atwood, Roy Galbreath, Gardner Skinner, James Arnold, John Greenfield, Blair Jaynes, Commissioner Maynard, Christi Simon, Woody Richards, Kimberly King) Subcommittee Chairman James Kile reported that the Uninsured Employers Fund (UEF) subcommittee met twice since the last Advisory Committee meeting. Mr. Kile said the meetings have been well attended with a good cross-section of representatives making for lively discussions. Mr. Kile noted that Deputy Attorney General Blair Jaynes has done a lot of work on drafting changes and that Christi Simon, Employer Compliance Bureau Chief, provided the subcommittee with a lot of research on state comparisons. Mr. Kile noted that according to the state comparison, each state's funding mechanism is very unique from one another.

Mr. Kile stated that funding has been the biggest stumbling block in moving forward with establishing a UEF in the past, and it is still the biggest problem. Mr. Kile noted that the subcommittee inquired about the use of penalties and fines collected by the Commission from employers who are non-compliant to establish the fund or to use for ongoing funding. The Commissioners replied that they have discussed the issue, but more discussions are needed before a decision can be made.

Commissioner Maynard commented that using the Commission's Compliance penalties and fines to fund the UEF have been looked at before, and when the Commission's costs are backed out of the amount of the penalties collected, there isn't enough money left to maintain or establish a UEF fund. Commissioner Maynard also remarked that establishing a UEF fund is very important to the Commission, but the Commission doesn't know where enough funding would come from to establish and maintain a UEF.

Mr. Kile added that discussion was held on the possibility of obtaining funds from several different sources to sustain the fund including collection from the employer for the medical payments expended on the injured uninsured employee. Commissioner Maynard replied that the Commission does not have the staff to pursue employers in an effort to recoup medical costs.

Mr. Kile reported that the next subcommittee meeting is scheduled for March 5, 2012, at 1:30 p.m. at the Commission office.

Industrial Special Indemnity Fund Update

Industrial Special Indemnity Fund Manager James Kile reviewed the current total permanent disability filings for the last several years including year to date for 2012. Mr. Kile explained the data and stated that according to the increase in cases so far, 2012 is looking to be more active than last year.

Healthcare Panel for Annual Medical Fee Updates - Subcommittee Chairman Steve Millard reported that this subcommittee will probably meet for the first time in April. Volunteers to serve on the subcommittee are Woody Richards, Mike Haxby, James Alcorn, Patti Vaughn, and

Commissioner Limbaugh. Mr. Millard has invited Ron Hodge with the Idaho Medical Association to be a member as well, and Mr. Millard is looking to invite additional members that represent sureties, physicians, legislators, and hospitals to round out the subcommittee.

Issues:

Update on Adjusting Issues – Scott McDougall reported that continuation of delayed adjustment decisions and untimely payments of accepted claims are still issues that the Benefits and Claims department continue to work on. Mr. McDougall noted that 90% to 95% of the issues that the Benefits Department deals with involve local adjusting offices of out of state insurers. The Benefits and Claims department has had some successes, but as adjusters change and sureties adjust their business methods issues continue to come up. The Benefits Department has been focusing on Change of Status Notices to ensure they are sent timely and contain all the required information to keep claimants informed as to the status of their claim. Another issue that Benefits is working with insurers and adjusters on is to discontinue the practice of stopping PPI benefits to claimants during the negotiation period of a lump sum settlement.

Also discussed was the emergence of out of state medical bill review companies contracted by sureties that at times create issues such as delayed payments to providers and claimants, timeliness of adjusting decisions, and local adjusters not knowing the status of the claims they are supposed to be adjusting.

Commissioner Baskin inquired of Mr. Haxby and Mr. Haase the reality of insisting that adjusting in all cases be handled in state as the use of out of state medical bill review companies continues to expand. Mr. Haxby replied that he has seen advancements in electronic data exchange that includes an electronic notification system to inform the local adjuster when a payment recommendation or an adjusting recommendation has been made creating better communication.

Mr. Haase agreed and noted that provider billing handled by electronic medical review companies has become a cottage industry which in most cases is done much faster than in-house, and they do a lot of networking to try and reduce costs. Mr. Haase said that about 99% of the sureties he deals with keep the actual adjusting in-state. Mr. Haxby and Mr. Haase agreed that adjusters need to inform the sureties they work for of the criteria needed to keep the insurer compliant in Idaho. Commissioner Maynard noted that the Commission is pursuing insurers who repeatedly are out of compliance with Idaho's regulations.

Industrial Commission Report:

Commissioner Limbaugh provided Advisory Committee members with an update on the current status of proposed rules and legislation. The medical fee rules (IDAPA 17.02.09) were approved by both germane committees of the House and Senate, with Representative Marriott and Senator Schmidt voting against the rule changes due to their concern that conversion factor dollars are too high for some of the specialty physicians. Commissioner Limbaugh plans to invite Senator Schmidt to participate in the Commission's health care update subcommittee.

Commissioner Limbaugh reported that the IDAPA 17.02.11, Security for Compensation for Self-Insurers rule passed unanimously. It was extremely helpful to have the backing of the Advisory Committee and subcommittee members, and Commissioner Limbaugh thanked the members for their participation. Commissioner Limbaugh stated that the Commission's budget presentation to the Joint Finance and Appropriation Committee will be held February 10, 2012. Commissioner Limbaugh also noted that in the appendix of the presentation, the Advisory Committee members are listed and will be acknowledged in the presentation that no other state agency utilizes a diverse Advisory Committee like the Commission.

Commissioner Limbaugh stated that the Commission has instituted the 20% reduction on this year's premium tax rate which will sunset in two years. The Commission doesn't know yet what the total effect will be until the first of August when premium taxes are due. The 20% reduction was passed last year by the legislature in an effort to decrease the Commission's cash balance to benefit employers rather than have the available cash diverted to the general fund.

Commissioner Baskin reported that the Workers' Compensation Section of the Idaho State Bar (ISB) informed him of their concern regarding the length of time it has been taking the Commission to approve lump sum settlement agreements. After some checking, Commissioner Baskin found that some of the delays were due to staff turnover in our Benefits and Claims Department, and part of the issue has been the requirement of attorneys to provide the Commission more information than previously required. Recently, loan companies have been providing loans to claimants against a claimant's potential lump sum settlement. Commissioner Baskin stated that this is one of the reasons for the requirement of additional information from the attorney prior to approval. The Commission is working on a template to present at the Sun Valley Seminar which will help customers to provide us with a set format to lessen submission of information back and forth which should help to rectify this issue.

Director Mindy Montgomery reported that the Idaho State Police are proposing changes to the Peace Officer and Detention Officer Temporary Disability Fund that will expand eligibility to access the fund. The proposal will add language similar to "injury caused at the hands of another person" in addition to the current language. The Commission will report back after the legislature adjourns regarding the status of the proposed legislation.

May 9th has been set for the next Advisory Committee Meeting.